

STATE OF WASHINGTON

# SIXTH REPORT

OF

Washington State Liquor Control  
Board



**DEFENDANT'S  
EXHIBIT**

CASE  
NO. C04-0360P

EXHIBIT  
NO. 425

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TX425-001



## WASHINGTON STATE LIQUOR CONTROL BOARD

# Report of Operations

OCTOBER 1, 1938, TO SEPTEMBER 30, 1939

The Board submits herewith the Sixth Annual Report of its operations for the twelve months ended September 30, 1939, as required by Section 72 of the Washington State Liquor Act. The 1939 session of the legislature made certain minor changes in the Act. Since these changes were only partially effective during the period under review, their full effect cannot be analyzed at this time. However, in another year, when the next report is made, the Board will be in position to give a more comprehensive statement of its observations and conclusions as to progress.

### Administration of the Act

The purpose of the Washington State Liquor Act is to minimize the evils connected with the liquor traffic by strict control of the liquor industry under a single administrative agency. The importance of the Act is in that it is supposed to encourage temperance. The Board has from time to time made comparisons of the Washington Act and the acts of other states and is more firmly convinced than ever that in so far as the requirements of this state are concerned, the Washington State Liquor Act provides a method of control which on the whole is superior to any other yet devised.

The faults of liquor distribution prior to prohibition have been largely eliminated, first by removing the private profit motive from the sale of hard liquors and placing the sale of such liquor in state stores exclusively, and second, by completely separating the retail function from the wholesale and manufacturing functions in the sale of beer and wine. The faults during prohibition, such as bootlegging, lawlessness, racketeering and poison liquor, have practically disappeared. Less than 1% of the liquor sold in this state is illicit and the vast sums of money which during prohibition went into the channels of organized crime to foster further lawlessness, are now diverted to legal industry and to government for the reduction rather than the increase of the tax burden.

During the fiscal year, there was a reduction in the consumption of alcoholic beverages of all kinds. Sales of spirituous liquors in gallons were less than they were during either of the two preceding years. Sales of wine were less than in any of the three preceding years. Less beer was sold than in any similar period since October 1, 1934. Any comments on the causes of this decrease must be hypothetical because of the many factors bearing on the sale of alcoholic beverages. During periods of increasing financial prosperity, a gain in sales would be expected. The growth in population would normally cause a gradual increase. Changes in price structures would be expected to cause changes in demand but apparently consumption fell off in lines where no change in price occurred as well as in lines where there were some increases in price levels. Changes in consumer buying habits cause further variations and it should be pointed out, that as the novelty of having liquor easily available wears off, and as the glamour which unfortunately surrounded drinking for a time begins to fade, a reduction in consumption would normally be expected.

the Act, three organizations were licensed for the first time during the year. As a result of a hearing held concerning violations, one club did not reapply for a license during the year, and in another instance two clubs combined to form one club. An analysis of the 75 licenses issued shows that the following types of organizations were granted licenses: 3 veterans clubs, 14 golf and country clubs, 38 fraternal clubs, 18 social clubs and 2 yacht clubs.

### BREWERS AND BEER WHOLESALERS

#### Number of Licenses Issued

During the 1939 fiscal year 15 brewery manufacturers' licenses were issued. One brewing company went out of business, but the brewery plant was sold to another brewing company which took out a new manufacturer's license. There were actually 14 breweries manufacturing malt beverages during the fiscal year. This represented a reduction of one brewer's license from the previous fiscal year. During the 1939 fiscal year 199 licenses were issued to beer wholesalers, being two less than the number issued the previous year. During the year there were several beer wholesalers who discontinued business.

#### Production and Sales

From October 1, 1938, to September 30, 1939, inclusive, Washington brewers produced 696,296 barrels of beer as compared with 751,419 barrels the previous year. Washington brewers sold 440,081 barrels in the state, while out-of-state brewers sold 136,514 barrels, making the total sales 576,595 barrels in the State of Washington for the 1939 fiscal year. Washington brewers sold 76.32% of the total beer consumed in the state in 1939, as compared with 79% in the previous year. Exports of Washington produced beer amounted to 241,003 barrels which represented approximately 35% of the total state production as compared with approximately 36% for the previous year.

State breweries produced 55,123 barrels less in 1939 than they produced in 1938, representing a decrease of 7.34%. Washington brewers sold 19,955 barrels less in the state in 1939 than they did in 1938, representing a decrease of 4.34%. Out-of-state brewers sold 13,264 barrels more in the state in 1939 than they did in 1938, representing an increase in sales amounting to 10.76%. State brewers exported 31,674 barrels less in 1939 than they did in 1938, representing a decrease amounting to 11.62%.

#### Certificates of Approval

Certificates of Approval were issued to 25 out-of-state brewers, an increase of one over the number issued for the 1938 fiscal year. The Board finds that the provisions of the Act requiring Certificates of Approval for out-of-state brewers have proved satisfactory. The fee involved is nominal and works no hardship on the out-of-state brewer. However, the fact that a Certificate is required has enabled the Board to more easily enforce compliance with the Act and Regulations.

#### Beer Importers

During the 1939 fiscal year 83 beer importers' licenses were issued as compared with 74 beer importers' licenses for the 1938 fiscal year, an increase

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of 9. This increase was undoubtedly due to the fact that the Board set up a new beer price posting regulation which required beer importers to post prices on beer imported by them. A majority of beer importers are also beer wholesalers, and as beer importers they set prices on out-of-state beers, sold to retail licensees. Under the law passed by the 1939 legislature, the beer importer has been made responsible for the conduct of any licensed beer wholesaler in selling, or contracting to sell, to retail licensees, beer imported by such beer importer.

#### **Agents' Licenses**

During the fiscal year ending September 30, 1939, 903 persons were issued agents' licenses. Included in this number were 46 agents' licenses which were issued to domestic wineries for the first time, as provided for by the 1939 legislature. There were 967 agents' licenses issued during the 1938 fiscal year. The policy of checking all applicants for agents' licenses has been continued with the result that undesirable applicants have had their applications disapproved. The holders of agents' licenses, realizing that they cannot violate the regulations of the Board without jeopardizing their rights to operate as beer salesmen or goodwill representatives, have been more careful in their operations.

#### **Hearings on Brewers and Beer Wholesalers**

During the 1939 fiscal year complaints were made by the inspection and investigation unit of the Brewers and Beer Wholesalers Division charging violations against 41 wholesale firms, some of whom were brewers. In some cases the violation charges were admitted and hearings waived, while hearings were held on the remainder of the complaints. Five major cases against state brewers were disposed of by the Board, resulting in severe penalties against each of the brewers involved. In addition, there were four major cases against beer wholesalers while the rest of the complaints involved lesser violations.

#### **Brewers and Importers Made Responsible for Their Distributors**

Section 27-D of the Washington State Liquor Act, which was enacted by the 1939 legislature makes every licensed brewer and beer importer responsible for the conduct of any licensed beer wholesaler in selling or contracting to sell, to retail licensees, beer manufactured by such brewer or imported by such beer importer. Where the Board finds that any licensed beer wholesaler has violated any of these provisions, the Board may, in addition to any punishment inflicted or imposed upon such wholesaler, prohibit the sale of the brand or brands of beer involved in such violation to any retail licensee within the trade territory usually served by such wholesaler for such period of time as the Board may fix, irrespective of whether the brewer manufacturing such beer or the beer importer importing such beer actually participated in such violation. The enactment of this law immediately caused brewers and beer importers to take a different attitude toward their distributors. Prior to the enactment of the law, brewers and beer importers generally assumed the attitude that after distributors purchased the beer it was the distributors' own responsibility as to whether or not they violated the Liquor Law or Regulations of the Board. However, since the enactment of this law, brewers and importers realize that if they aid a distributor,



financially, or otherwise, with the thought that such aid will be passed along by the distributor to retail licensees, the Board may, in its discretion, prohibit the sales of the brands of beer involved in any given sales territory. The Board also, in its discretion, may even restrict the sales of beer in given territories where the brewer or beer importer knows, or should have reason to know, that the distributor purchasing from the brewer or beer importer, is engaging in violative practices. The Board found that violations on the part of distributors have been greatly reduced due to the enactment of this new law.

#### Monetary Penalty

Section 27-C of the Washington State Liquor Act, passed by the 1939 legislature, provides that "The Board in suspending any license may further provide in the order of suspension that such suspension shall be vacated upon payment to the Board by the licensee of a monetary penalty in an amount then fixed by the Board, not exceeding a sum equal to the aggregate annual license fees of all licenses then held by such licensee." The enactment of this law provided the Board with a much-needed method of disposing of violations of the Liquor Act or Regulations. Prior to the enactment of this section, the board had only power to suspend or cancel licenses, which made it difficult to impose equitable penalties.

Since the enactment of Section 27-C into law, the Board, in several instances, disposed of violations by providing for monetary payments by licensees, vacating suspensions, with the result that the sum of \$3,275.00 was paid to the Board.

#### Beer Price Posting—Contract Filings Under New Regulation

On July 1, 1939, Regulation 49 as amended was put into effect by the Board, substantially changing the beer price posting set-up. Under the old regulation, all beer wholesalers were required to post prices with the Board on brands of beer handled by them. Each beer wholesaler could file any price desired on the brands of beer handled, with the result that in many instances distributors had different prices on the same brand and sized beer package in any given zone. There was evidence that an unhealthy condition was developing between some brewers and certain of their distributors. Under the law passed by the 1939 legislature making the brewer and beer importer responsible for the conduct of beer wholesalers in selling, or contracting to sell to retail licensees, beer manufactured by such brewer, or imported by such beer importer, the Board felt that pursuant to this responsibility, state brewers and beer importers should file price postings with the Board which would govern the prices at which their distributors would be required to sell their brands of beer or ale to retail licensees of the Board.

Under the new beer price posting regulation, it is not possible for a distributor selling beers manufactured in the state, to sell at a price differing from those filed and in effect by the state brewers. Beer importers likewise must file prices on brands of beer imported by them for resale in the state to retail licensees.

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**DOMESTIC WINERIES AND WINE WHOLESALERS****Production and Sales**

During the fiscal year ended September 30, 1939, 40 licenses were issued to domestic wineries and 123 licenses were issued to domestic wine wholesalers, as compared with 42 winery and 119 wholesale licenses issued the year before. During the period from October 1, 1938, to September 30, 1939, domestic wineries produced 1,872,989 gallons, out of which 425,475 gallons were used for reprocessing, including distillation. They sold 760,895 gallons in the state as compared with 648,761 gallons sold during the preceding fiscal year.

Sales of domestic wine by type during the 1939 fiscal year were as follows:

Grape .....	357,983 Gallons
Loganberry .....	189,609 Gallons
Apple .....	99,684 Gallons
Currant .....	50,994 Gallons
Blackberry .....	23,157 Gallons
Cherry .....	14,676 Gallons
Miscellaneous Fruit .....	14,263 Gallons
Miscellaneous Berry .....	10,529 Gallons
Total .....	760,895 Gallons

Of the total number of gallons of wine sold in the state during the 1939 fiscal year, 527,160 gallons, or approximately 69.2% of the total, were unfortified, and 233,735 gallons of fortified wines were sold, being approximately 30.8% of the total. The sale of domestic wine in the State of Washington during the fiscal year of 1939 represented 47.5% of the total wines sold in the state, whereas, domestic wines represented 37.7% of the total wines sold in the state during the 1938 fiscal year.

During the 1939 fiscal year export sales amounted to 300,950 gallons, as compared with 147,117 gallons sold to out-of-state markets during the fiscal year of 1938. The 300,950 gallons sold outside the state represented 28%, while the 760,895 sold in the state represented 72% of the total sales of Washington wine. Out-of-state sales in 1939 increased 104.57% over the 1938 fiscal year, while state sales increased 17.3%.

**Consumption of Local Fruits**

From October 1, 1938, to September 30, 1939, Washington vintners and fruit distillers consumed 12,107.8 tons of Washington fruits and berries in the production of wines and brandies as compared with 8,784.8 tons during the previous year. Consumption of fruits and berries during the 1939 fiscal year was as follows:

Apples .....	7,570.4 Tons
Grapes .....	3,038.6 Tons
Loganberries .....	476.1 Tons
Blackberries .....	474.2 Tons
Currants .....	199.0 Tons
Prunes .....	184.4 Tons
Cherries .....	76.3 Tons
Pears .....	46.6 Tons
Raspberries .....	33.8 Tons
Olympic Berries .....	1.9 Tons
Boysenberries .....	1.1 Tons
Youngberries .....	.2 Ton
Huckleberries .....	.2 Ton

12,107.8 Tons



### Supervision

The Board has tried to assist the vintners in this state to produce wines of high quality. It believes that there are certain varieties of berries and fruits grown in the state which are especially suitable for wine purposes and has striven to impress upon the local vintners that it is to their interest to establish their wines in the high quality bracket so that they may compete with the wines of other parts of the country and develop a national sales territory. The Board has followed a policy of seizing substandard wine, it has insisted upon sanitary conditions being maintained in and near the wineries and it has been increasingly strict in the enforcement of the provisions of the law and regulations.

In 1938 a program was inaugurated whereby inspectors in the winery division took samples of all wine in the process of manufacture and samples of finished wines from the winery premises and the premises of wholesale and retail licensees for analysis in the Board laboratory. All wines which were found to be substandard, were seized by the Board in conjunction with the State Department of Agriculture, Division of Pure Food and Drugs, until reconditioned to meet the requirements of the Board or otherwise disposed of. This same program was carried out during the 1939 fiscal year. On October 1, the beginning of the 1939 fiscal year, there were 52,990 gallons under seizure for various reasons. During the 1939 fiscal year, 40,480 gallons of wine were seized because of high arsenic content and 21,194 gallons of wine were seized because of high volatile acidity, making a total of 61,674 gallons seized during the 1939 fiscal year. During the year, 33,982 gallons were released for blending, distilling, dumping, and vinegar, leaving a total of 80,682 actual wine gallons remaining in seizure up to and including September 30, 1939, the last day of the 1939 fiscal year. It is to be noted that 25,664 gallons of apple wine under seizure because of high volatile acidity, were also under seizure for excessive arsenic.

### New Law Governing Domestic Wineries

Changes in the Washington State Liquor Act enacted by the 1939 legislature, of importance to domestic wineries and domestic wine wholesalers are as follows: Section 23-C of the Liquor Act, governing license fees for domestic wineries, was amended by the 1939 legislature. Under the former law, domestic wineries had only to pay a license fee of \$5.00 per annum. Under the new law, the license fees are graduated on a production basis, ranging from a minimum of \$15.00 per year with a production of 2,500 gallons or less to \$250.00 per year with production over 200,000 to 500,000 gallons per annum, with an additional fee of \$150.00 per year for each 500,000 gallons or fraction thereof, over 500,000 gallons. Persons holding domestic winery licenses prior to the enactment of the new license law, were authorized to continue operations under the old licenses without additional fee for the remainder of the 1939 fiscal year. However, all operators were required to be licensed under the provisions of the new law at the beginning of the 1940 fiscal year.

Section 27-D makes every domestic winery responsible for the conduct of any licensed domestic wine wholesaler in selling or contracting to sell to retail licensees, wine manufactured by such domestic winery. Where the Board finds that any licensed wine wholesaler violated any of the provisions of the Liquor Act or the regulations of the Board in selling or contracting to sell

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wine to retail licensees, the Board may, in addition to any punishment inflicted upon such wholesaler, prohibit the sale of the brand or brands of wine involved in such violation to any or all retail licensees within the trade territory usually served by such wholesaler for such period of time as the Board may fix, irrespective of whether the domestic winery manufacturing such brand or brands of wine actually participated in such violation. The enactment of these provisions into the law has had a salutary effect upon the wine industry as it has placed new responsibilities upon the domestic wine manufacturer.

Another new provision, Section 23-I, requires all salesmen and all goodwill representatives of domestic wineries and domestic wine wholesalers to procure agents' licenses. Each agents' license costs \$2.00 per annum. This particular provision of the Liquor Act became effective April 15, 1939, and forty-six agents' licenses were issued.

Section 24-A was partly amended so that domestic wineries could comply with the Federal Alcohol Administration label requirements. Section 45 was revised for the same reason.

#### LEGAL DEPARTMENT

##### Litigation

During the past fiscal year no legal actions (other than garnishments) have been brought against the Board, and at the end of the fiscal year no legal actions were pending against the Board. The case of *William Steuer v. R. L. Stewart*, inspector, from which case the Board had been previously dismissed as a party defendant, is still pending, no action whatever having been taken during the last fiscal year. During the last fiscal year an action was brought in the Superior Court for Chelan County, being No. 14180, in which Inspector R. C. Clark was named as one of the defendants. Inspector Clark was not served until after a demurrer by the other defendants had been sustained, and it appeared likely that the plaintiff would never press the case to judgment. In view of such situation, a demurrer was filed for Mr. Clark. It is altogether likely that no further action will ever be taken in such case. All garnishment actions involving the Board have been dismissed.

##### Other Activities

The Attorney General and the Assistant Attorney General assigned to the Board have given opinions upon all questions submitted. They have advised and consulted with the Board and its subordinates when called upon. They prepared House Bill 172 in cooperation with the Board, which bill amended the Liquor Control Act in several particulars and was passed as chapter 172, Laws of 1939. They also prepared House Bill 260 at the request of the Governor, which bill amended the law relating to the distribution of moneys in the liquor revolving fund and which bill was passed and became chapter 173, Laws of 1939. In cooperation with the Board, they assisted in the preparation of all regulations promulgated during the year, and particularly a complete set of regulations effective October 1, 1939.

The Attorney General and Assistant Attorney General assigned to the Board prepared a discussion of abatement proceedings under Section 33-A of the Washington State Liquor Act for the assistance of the various prosecuting attorneys in enforcing such section, and sent copies to all prosecuting attorneys. Several abatement actions have been instituted.